

REMARKS

Claims 1, 2, 8, 9, 25, and 72 have been amended to reflect the election of invention and to clarify the claim language. Claims 80 and 81 have been added, which find support in the specification and claims as filed, for example in the Examples and sequence listing. No new matter has been added.

Claim Objections

The Examiner objected to claims 1, 2, 8, 9, 12, 13, 25, and 71-76 as containing nonelected subject matter. Applicant has amended the claims to make appropriate corrections. Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. §112

The Examiner rejected claims 1, 2, 8, 9, 12, 13, 25, 66, 67 and 71-76 under 35 U.S.C. §112, second paragraph, as indefinite.

(1) The Examiner rejected claims 1, 2 and 66 because claim 1 refers to SEQ ID NO:1, while claims 2 and 66 refer (at least in part) to the coding region of SEQ ID NO:1. Applicant respectfully traverses the rejection.

The claim language of claim 1 is asserted to encompass both the coding region of SEQ ID NO:1 and the entire SEQ ID NO:1. Claim 1 recites isolated nucleic acid molecules that hybridize to SEQ ID NO:1, degenerate nucleic acids, and complementary nucleic acids. Both SEQ ID NO:1 and the coding region of SEQ ID NO:1 would be considered to be complements of molecules that hybridize to SEQ ID NO:1. Therefore, Applicant respectfully request reconsideration of the rejection.

(2) The Examiner rejected claim 8 as reciting a “unique fragment”. Applicant has amended claim 8 and respectfully requests reconsideration.

(3) The Examiner rejected claim 9 as indefinite for use of improper Markush format. Applicant has amended claim 9 to correspond to proper Markush format. Accordingly, Applicant respectfully requests reconsideration.

(4) The Examiner rejected claim 25 as indefinite for recitation of the limitation “the contiguous segments,” as having no antecedent basis in the claim. Applicant has amended claim 25 to refer to first and second contiguous segments. Reconsideration of the rejection is respectfully requested.

(5) The Examiner rejected claim 25 as indefinite for recitation of the term “nonoverlapping.” Amended claim 25 does not contain this term, thus obviating the rejection.

(6) The Examiner rejected claims 75 and 76 as indefinite because the primers recited in claim 76 would amplify only a portion of SEQ ID NO:1, not the entire sequence as is recited in claim 75. Applicant has amended claim 75 to depend from claim 25, which recites that the sequence amplified using the kit is at least a portion of SEQ ID NO:1. Applicant therefore respectfully requests reconsideration.

In view of the amendments to the claims and the foregoing discussion, Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 2, 8, 9, 12, 13, 25, 66, 67 and 71-76.

Rejections Under 35 U.S.C. §102

The Examiner rejected claims 8, 9, 71 and 72 under 35 U.S.C. §102(b) as being anticipated by US 5,582,979.

The sequence match identified by the Examiner is between a claimed fragment and a portion of SEQ ID NO:32 of US 5,582,979. SEQ ID NO:32 is 240 nucleotides in length; there is, however, no teaching in US 5,582,979 of a fragment as claimed by Applicant. The portion of SEQ ID NO:32 cited by the Examiner is not described by a separate SEQ ID NO or even as a portion of SEQ ID NO:32 of US 5,582,979. Therefore, US 5,582,979 does not teach each and every element of the claimed invention.

In view of the foregoing arguments, Applicant respectfully requests that the Examiner withdraw the rejection of claims 8, 9, 71 and 72 under 35 U.S.C. §102(b) as anticipated by US 5,582,979.

The Examiner rejected claims 8, 9, 71 and 72 under 35 U.S.C. §102(e) as being anticipated by SEQ ID NO:1 of US 6,087,485. Applicant respectfully traverses the rejection.

The sequence match identified by the Examiner is between a claimed fragment and a portion of SEQ ID NO:1 of US 6,087,485. SEQ ID NO:1 is 72928 nucleotides in length; there is, however, no teaching in US 6,087,485 of a fragment as claimed by Applicant. The portion of SEQ ID NO:1 cited by the Examiner is not described by a separate SEQ ID NO or even as a portion of SEQ ID NO:1 of US 6,087,485. Therefore, US 6,087,485 does not teach each and every element of the claimed invention.

In view of the foregoing arguments, Applicant respectfully requests that the Examiner withdraw the rejection of claims 8, 9, 71 and 72 under 35 U.S.C. §102(e) as anticipated by US 6,087,485.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

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